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U.S. EPA, REGION IX
REGIONAL HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

Docket No. CAA-9-2004-0002

CONSENT AGREEMENT AND FINAL ORDER

pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

The United States Environmental Protection Agency (“EPA”), Region IX, and Colmac Energy, Inc. (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”) pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

1. This is an administrative action brought under Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), for assessment of a civil administrative penalty against Respondent.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated the Act's provisions governing federal operating permits,

1 specifically the requirements set forth at Subchapter V of the Act, 42 U.S.C. §§ 7661-7661f, and
2 the implementing regulations set forth at 40 C.F.R. Part 71. Furthermore, this Consent
3 Agreement and Final Order serves as notice, pursuant to Section 113(d)(2)(A) of the Act, 42
4 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for these violations.

5 3. Complainant is the Director of the Air Division in EPA, Region IX (the
6 "Complainant"). Pursuant to EPA Delegation Order Number 7-6-A, dated May 4, 1994, the
7 Administrator of EPA has delegated the authority to file this action under the Act to the Regional
8 Administrator of EPA, Region IX, and pursuant to EPA Regional Order Number R1265.05A,
9 dated August 14, 2003, the Regional Administrator re-delegated that authority to Complainant.

10 4. Respondent is Colmac Energy, Inc.

11 B. STATUTORY AND REGULATORY BASIS

12 5. On November 15, 1990, the President signed into law the Clean Air Act Amendments
13 of 1990. The Amendments added Subchapter V to the Clean Air Act ("Title V"), 42 U.S.C. §§
14 7661-7661f, which establishes requirements for a federal operating permits program.

15 6. Section 502 of the Act, 42 U.S.C. § 7661a, provides for state and federal air quality
16 operating permit programs to be run by the "permitting authority" to regulate "major sources," as
17 those terms are defined at Sections 501(4) and 501(2) of the Act, 42 U.S.C. §§ 7661(4) and
18 7661(2).

19 7. Under the authority of Section 502(b) of the Act, 42 U.S.C. § 7671a(b), the
20 Administrator promulgated regulations establishing standards and requirements regarding the
21 minimum elements of a permit program. These regulations, codified at 40 C.F.R. Part 71 for
22 federal operating permit programs, provide comprehensive requirements, standards, and
23 procedures by which the Administrator issues operating permits and administers and enforces
24 federal operating permit programs. In particular, 40 C.F.R. § 71.4(b) provides for the
25 Administrator to administer and enforce a federal operating permit program in "Indian country,"
26 as that term is defined at 40 C.F.R. § 71.2.

27 8. Pursuant to 40 C.F.R. § 71.6(a)(3), each permit shall require that monitoring reports be
28 submitted to the permitting authority at least every six months.

1 9. Pursuant to 40 C.F.R. § 71.6(c)(5), each permit shall require that compliance
2 certifications be submitted to the permitting authority at least annually.

3 10. Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), violation of any
4 regulation or permit promulgated, issued, or approved under Title V of the Act may result in the
5 assessment of a civil administrative penalty.

6 C. ALLEGED VIOLATIONS

7 11. Respondent, a corporation, is a "person" as that term is defined by Section 302(e) of
8 the Clean Air Act, 42 U.S.C. § 7602(e).

9 12. Respondent owns, operates or is otherwise wholly responsible for an energy facility
10 (the "Facility"), located near Mecca, California, that lies within the jurisdiction of the Cabazon
11 Band of Mission Indians, a federally recognized Indian tribe. As such, the Facility is located in
12 Indian country.

13 13. Respondent's Facility represents a major source now and at all times relevant to these
14 allegations made herein.

15 14. Due to its status as a major source, Respondent requested a Title V permit for the
16 operation of its Facility. Pursuant to 40 C.F.R. Part 71, such a permit was issued to Respondent
17 by Complainant on August 2, 2000. The permit number for the Facility is CB-OP-99-01.

18 15. Pursuant to condition III.C. (implementing 40 C.F.R. § 71.6(a)(3)) of Respondent's
19 Title V permit, submission to Complainant of a six-month monitoring report that identifies all
20 deviations for that reporting period is required. The submission is required at the end of the
21 reporting period.

22 16. Pursuant to condition IV.C. (implementing 40 C.F.R. § 71.6(c)(5)) of Respondent's
23 Title V permit, submission to Complainant of an annual compliance certification that lists
24 Respondent's compliance status with the terms and conditions of its Title V permit and identifies
25 any deviations from full compliance within that certification period is required. The submission
26 is required at the end of the reporting period.

1 17. In December 2002, Complainant undertook a comprehensive compliance review of
2 required submissions for the 2001-02 fiscal year by Title V permit-holders issued permits
3 pursuant to 40 C.F.R. Part 71.

4 18. In January 2003, Complainant determined that Respondent had failed to submit
5 records required by its Title V permit and the applicable regulations for fiscal year 2001-02.
6 These records included both monitoring reports (covering the reporting periods from August 2,
7 2001 to February 2, 2002 and February 2, 2002 to August 2, 2002, respectively) and the
8 compliance certification (covering the reporting period from August 2, 2001 to August 2, 2002).

9 19. On January 8, 2003, Complainant issued an information request to Respondent
10 pursuant to Section 114 of the Act, 42 U.S.C. § 7414, regarding the missing records. Respondent
11 subsequently submitted the three missing records to Complainant on January 22 and March 10,
12 2003, months after the end of their respective reporting periods.

13 20. Respondent's failure to timely submit the required records constitutes two violations
14 of Section 502 of the Act, 42 U.S.C. § 7661a, 40 C.F.R. §§ 71.6(a)(3) and 71.6(c)(5), and permit
15 conditions III.C. and IV. C.

16 D. RESPONDENT'S ADMISSIONS

17 21. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
18 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
19 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
20 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
21 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
22 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
23 proposed Final Order contained in this CAFO.

24 E. CIVIL ADMINISTRATIVE PENALTY

25 22. In settlement of the violations specifically alleged in Section I.C of this CAFO, and
26 in consideration of the statutory penalty factors set forth in Section 113(e) of the Act and in
27 EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991,
28 Respondent shall pay a civil administrative penalty of THIRTY THOUSAND, EIGHT

1 HUNDRED DOLLARS (\$30,800). Respondent shall pay this civil penalty within thirty (30)
2 days of the effective date of this CAFO, shall make this payment by cashier's or certified check
3 payable to the "Treasurer, United States of America," and shall send the check by certified mail,
4 return receipt requested, to the following address:

5 Mellon Bank
6 U.S. EPA Region IX Hearing Clerk
7 P.O. Box 360863M
Pittsburgh, PA 15251

8 Respondent shall accompany its payment with a transmittal letter identifying the case name, the
9 case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty,

10 Respondent shall send a copy of the check and transmittal letter to the following addresses:

11 Regional Hearing Clerk
12 Office of Regional Counsel (ORC-1)
13 U.S. Environmental Protection Agency, Region IX
14 75 Hawthorne Street
San Francisco, CA 94105

15 Matt Salazar
16 Air Division (AIR-5)
17 U.S. Environmental Protection Agency, Region IX
18 75 Hawthorne Street
San Francisco, CA 94105

19 Edgar P. Coral
20 Office of Regional Counsel (ORC-2)
21 U.S. Environmental Protection Agency, Region IX
22 75 Hawthorne Street
San Francisco, CA 94105

23 23. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
24 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
25 use such payment as a tax deduction.

26 24. If Respondent fails to pay the assessed civil administrative penalty of THIRTY
27 THOUSAND, EIGHT HUNDRED DOLLARS (\$30,800), as identified in Paragraph 22, by the
28 deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA.
The amount of the stipulated penalty will be THIRTEEN THOUSAND, TWO HUNDRED
DOLLARS (\$13,200), and will be immediately due and payable on the day following the
deadline specified in Paragraph 22, together with the initially assessed civil administrative

1 penalty of THIRTY THOUSAND, EIGHT HUNDRED DOLLARS (\$30,800), resulting in a total
2 penalty due of FORTY-FOUR THOUSAND DOLLARS (\$44,000). Failure to pay the civil
3 administrative penalty specified in Paragraph 22 by the deadline specified in that Paragraph may
4 also lead to any or all of the following actions:

5 (1) EPA may refer the debt to a credit reporting agency, a collection
6 agency, or to the Department of Justice for filing of a collection action in the appropriate United
7 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
8 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
9 collection proceeding.

10 (2) The U.S. Government may collect the debt by administrative offset
11 (i.e., the withholding of money payable by the United States to, or held by the United States for, a
12 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
13 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
14 C.F.R. §§ 13(C) and 13(H).

15 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
16 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
17 business with EPA or engaging in programs EPA sponsors or funds.

18 (4) Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3701 et seq., and 40
19 C.F.R. Part 13, the U.S. Government may assess interest, administrative handling charges,
20 enforcement expenses, and nonpayment penalties against the outstanding amount that
21 Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty
22 specified in Paragraph 22 by the deadline specified in that Paragraph.

23 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
24 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
25 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
26 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
27 (30) days of the effective date of this CAFO.

1 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §
2 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
3 either actual or average cost incurred (including both direct and indirect costs), for every month
4 in which any portion of the assessed penalty is more than thirty (30) days past due.

5 (c) Enforcement Expenses and Nonpayment Penalties.
6 Pursuant to 42 U.S.C. § 7413(d)(5), if Respondent fails to pay on a timely basis the full amount
7 of the assessed penalty, interest, and handling charges, Respondent shall be liable for the U.S.
8 Government's enforcement expenses, including, but not limited to, attorneys' fees and costs
9 incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for
10 each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten
11 percent (10%) of the aggregate amount of Respondent's outstanding or overdue penalties and
12 nonpayment penalties accrued from the beginning of such quarter. In addition, pursuant to 31
13 U.S.C. § 3717(e)(2) and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six
14 percent (6%) annually, will be assessed on all debts more than ninety (90) days delinquent.

15 **F. CERTIFICATION OF COMPLIANCE**

16 25. By executing this CAFO, Respondent certifies that it is in full compliance with all
17 requirements of Subchapter V of the Act, 42 U.S.C. §§ 7661-7661f, and its implementing
18 regulations set forth at 40 C.F.R. Part 71.

19 **G. RETENTION OF RIGHTS**

20 26. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
21 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
22 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
23 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
24 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
25 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
26 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
27 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

1 27. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
2 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
3 and permits.

4 H. ATTORNEYS' FEES AND COSTS

5 28. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
6 this proceeding.

7 I. EFFECTIVE DATE

8 29. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
9 effective on the date that the Final Order contained in this CAFO, having been approved and
10 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

11 J. BINDING EFFECT

12 30. The undersigned representative of Complainant and the undersigned representative of
13 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
14 of this CAFO and to bind the party he or she represents to this CAFO.

15 31. The provisions of this CAFO shall apply to and be binding upon Respondent and its
16 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
17 and assigns.

18
19 FOR RESPONDENT COLMAC ENERGY, INC.:

20
21 July 8th 2004

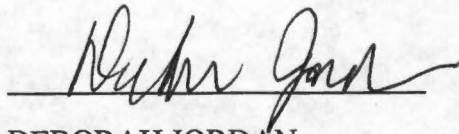
22 DATE

23 Graeme R. Donaldson
24 GRAEME DONALDSON
25 General Plant Manager
26 Colmac Energy, Inc.
27 62-300 Gene Welmas Drive
28 P.O. Box 758
Mecca, California 92254-0758

FOR COMPLAINANT EPA:

8.20.04

DATE



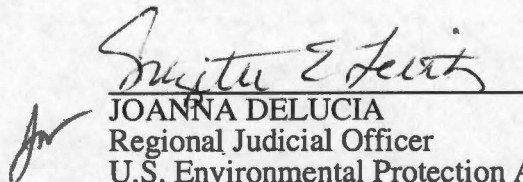
DEBORAH JORDAN
Director, Air Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and COLMAC ENERGY, INC. having entered into the foregoing Consent
3 Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. CAA-9-2004-0002) be entered,
5 and Respondent shall pay a civil administrative penalty in the amount of THIRTY THOUSAND,
6 EIGHT HUNDRED DOLLARS (\$30,800), in accordance with the terms set forth in the Consent
7 Agreement.

8
9
10 24 Aug 04
11 DATE

12 
13 JOANNA DELUCIA
14 Regional Judicial Officer
15 U.S. Environmental Protection Agency, Region IX
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